



June 21, 2002

Evangeline Tsibris Cummings
Environmental Protection Agency
Office of Environmental Information, Mail Code 2842T
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Attention: Docket ID No. OEI-10014

Dear Ms. Cummings:

OMB Watch appreciates the opportunity to comment on the Environmental Protection Agency's draft data quality guidelines, published on April 30, 2002 in compliance with the Data Quality Act (Section 515(a) of the Treasury and General Government Appropriations Act for FY 2001). While we support the efforts of EPA to ensure that data disseminated to the public is of high quality, we believe this should not inhibit public access to government information or interfere with existing rulemaking processes.

OMB Watch is a nonprofit research and advocacy organization that has as its core mission government accountability and improving citizen participation. Public access to government information has been an important part of our work for more than 15 years. For example, in 1989, we launched RTK NET, an online service providing public access to environmental data collected by EPA, which has given us both practical experience and policy experience with disseminating government information. Additionally, OMB Watch has been very engaged in agency regulatory processes, encouraging agency rules to be sensible and more responsive to public need.

General Response

Notwithstanding a few changes to EPA's proposed guidelines, OMB Watch supports the general thrust of the proposal. Our hope is that the final EPA guidelines reflect some key points:

- **The Data Quality Act should not create new, major mandates on EPA.** The Act was added at the last second as an appropriations rider with no congressional debate, hearings, or even report language clarifying its intent. This total lack of legislative history and congressional involvement would indicate that the size of the mandate is very small, and tradeoffs with major congressional priorities should be minimized. The presumption is that legislation passed in this way, without open consideration and debate by Congress and the public, should not create significant new work for agencies. Therefore, reorganization of EPA

priorities is not required or appropriate, and the EPA should retain maximum flexibility in implementing the guidelines.

- **EPA should carefully consider its final guidelines to ensure they do not exceed the scope of the Data Quality Act's requirements.** For example, there is nothing in the Act that suggests that EPA is to cover methods for risk assessment or, for that matter, address a process for reconsideration of items rejected through the administrative mechanisms. In fact, it can be inferred that the lack of public debate over the DQA signifies that it is simply a clarification of requirements already publicly considered during passage of the Paperwork Reduction Act (PRA). The PRA carefully defines "dissemination," which does not contemplate research used in rulemakings. The PRA also does not envision any standards for information, such as distinguishing "influential" from other types of information or creating a standard for reproducibility, which are just two of the many other factors that OMB created and imposed as part of its guidelines. EPA must keep these factors in mind as it proceeds with its guidelines. We urge EPA to look to the Data Quality Act itself, as well as laws that govern the activities of EPA, in determining the scope and components that are required to be in the guidelines.
- **We strongly support EPA's commitment to public access.** As EPA indicates, "Increased information transparency among scientists, public health officials, businesses, citizens, and all levels of government fosters greater knowledge about the environment and what can be done to protect it." Consistent with that premise, we believe that data quality should be only one of several factors that is considered when disseminating information. Indeed, EPA has successfully demonstrated through the Toxics Release Inventory that public access to information helps to improve data quality by encouraging more accurate reporting and handling of the data.
- **EPA should strongly affirm its position that the guidelines are not legally binding and do not create additional judicial recourse.** OMB Watch strongly supports improving data quality. But we also do not want to turn a common sense initiative into a burdensome process that bogs EPA down in a quagmire of legal process. As OMB indicates in its guidelines, these guidelines should "not impose unnecessary administrative burdens that would inhibit agencies from continuing . . . to disseminate information that can be of great benefit and value to the public. In this regard, OMB encourages agencies to incorporate the standards and procedures required by these guidelines into their existing information resources management and administrative practices rather than create new and potentially duplicative or contradictory processes." We encourage EPA to follow this course of action and retain the position in its draft guidelines that the guidelines are not legally binding.

- **EPA should make several factors clear about its administrative mechanisms and its process for reconsideration.** First, EPA should establish a 30-day time limit for requests to correct information, as well as for reconsideration of requests. In other words, once EPA releases information, affected parties would have 30 days to file a correction of information or ask for reconsideration upon rejection. Second, the final guidelines should put a limit on how far back in time requests can go, especially for when the guidelines first become effective. We do not want to see EPA become bogged down in frivolous requests dating back many years or the administrative mechanisms become a means for revisiting rulemakings. Third, EPA's response to correction requests should be proportional to the significance and importance of the information in question. In other words, the administrative mechanisms and the reconsideration process should be very flexible. Fourth, EPA should limit the administrative mechanism to correction of factual data and not the wholesale questioning of types of information and methods of collection or a means for "de-publishing." Finally, EPA should be clear that the requestor has the burden of proof to establish they are "affected" and that information is incorrect.
- **EPA should disclose all requests for correction of information and the disposition of those requests.** EPA should create a public log of who requested a change, the nature of the request, any specific changes made, and why they were made. For example, if there was a change to the TRI data, the public database should indicate that there was a change in the data and why it was made.
- **EPA should clearly state that third party information that is not being disseminated by the agency is exempt from the final data quality guidelines.** For example, EPA should continue to allow links to non-governmental sites through its web site. EPA's draft guidelines already speak to these issues and should be retained.
- **These guidelines should have no influence on EPA's policy or procedure with regard to the conduct of risk assessments.** As stated above, we believe OMB's discussion of this subject is far beyond the scope of the Act. If EPA feels compelled to address the subject, we support EPA's comments to adapt, not adopt, the requirements of the Safe Drinking Water Act.
- **EPA should continue its existing policy of flexibly using peer review where appropriate.** However, EPA should rectify its policy on peer reviewer conflicts of interest. To the extent possible, EPA should avoid reviewers with conflicts. When conflicts do exist, they should be publicly disclosed.

Detailed Comments

1. Background and Discussion Section 2.3 EPA's Commitment to Public Access

OMB Watch commends EPA for being the only agency drafting data quality guidelines that includes a section emphasizing that public access to information is a central government responsibility that the agency plans to uphold. Too few agencies have taken this opportunity to acknowledge and reaffirm their commitment to the important benefits derived from providing public access to government information. The inclusion of this detailed section helps EPA's data quality guidelines strike a different tone from other agencies. This section helps establish a context within which data quality can be discussed constructively as a component of an agency's information management and not as a stand-alone absolute requirement. If there is any question about whether information should be disclosed and accessible to the public, EPA should err on the side of the public's right-to-know. Data quality guidelines must not be allowed to interfere with EPA's basic mission and activities. OMB Watch has recommended that other agencies emulate this section in their data quality guidelines.

2. Background and Discussion Section 3 Existing Policies and Procedures

The EPA correctly and appropriately notes in this section that OMB guidelines on data quality encourage agencies to avoid duplicating other processes. Another point stressed is that OMB has specified that the guidelines are not intended to impose unnecessary administrative burdens that would inhibit agencies from using the Internet or other technologies to disseminate information that could benefit the public. EPA correctly concludes that rather than developing extensive new data quality policies or procedures, it need merely enhance existing activities and programs the agency already has in place that address quality of information. OMB Watch agrees that EPA should not waste its resources to "reinvent the wheel" when it comes to data quality.

New procedures might unintentionally create even greater vulnerabilities for EPA's activities to become derailed and bogged down by lengthy data quality disputes. Extensive new procedures for data quality would mean that staff, likely unfamiliar with the issues, are enacting untested policies and programs for the first time with delays and problems that all new programs initially face. Indeed, new programs would likely provide even greater opportunities to those regulated interests that are interested in abusing and manipulating the data quality guidelines. By handling data quality issues within established and well-tested programs and procedures, EPA may effectively minimize any opportunity for abuse.

3. Draft Guidelines Section 1.1 What is the purpose of these guidelines?

Of critical concern is the issue of whether these guidelines are to be legally binding on agencies. It seems clear that industry will attempt to use these guidelines as a vehicle to challenge federal regulation, by challenging the information used to support it.

Corporate interests will undoubtedly attempt to force agencies to rescind or “de-publish” information they dislike by trumping up questions of “quality.” Representatives of regulated industry have indicated on numerous occasions that they intend to seek judicial review on failed data quality challenges. If regulated industry is allowed to use the courts to challenge data quality decisions it could bog down EPA actions and hobble core functions. Therefore, it is imperative that EPA make every effort to clearly assert the limits of these guidelines and preserve its own flexibility to accomplish core mandates unfettered.

EPA states in Section 1.1 of its draft data quality guidelines:

“This document provides guidance to EPA staff and informs the public of EPA’s policies and procedures. These guidelines are not a regulation. They are not legally enforceable and do not create any legal rights or impose any legally binding requirements or obligations on EPA or the public. Nothing in these guidelines affects any otherwise available judicial review of EPA action. The guidelines may not apply to a particular situation based on the circumstances, and EPA retains discretion to adopt approaches on a case-by-case basis that differ from the guidelines, where appropriate.”

OMB Watch supports EPA’s strong and clear statement that these are “guidelines” and not regulations, that they are not legally enforceable. EPA’s statement that this document provides guidance to EPA staff, but does not legally bind them, represents a logical understanding of the guideline process and fits with the minimal congressional attention given to the Data Quality Act. All agencies, including EPA, should retain discretion in applying or adopting these guidelines as appropriate to various situations. EPA correctly asserts that nothing in the guidelines affects any otherwise available judicial review of EPA action, meaning that the guidelines create no new opportunity for judicial review on their own basis. This position allows EPA to preserve the necessary flexibility and power to defend against efforts by regulated interests to manipulate agency processes by attempting to use “data quality” to control and restrict information. EPA should maintain its strong position that the data quality guidelines are not legally binding and provide no new judicial review rights.

4. Draft Guidelines Section 1.2 When do these guidelines apply?

OMB Watch urges EPA to strengthen and expand its assertion in Section 1.2:

“Factors such as imminent threats to public health or homeland security, statutory or court-ordered deadlines, or other time constraints, may limit or preclude applicability of these guidelines.”

This short statement represents an important principle and could be critical in the agency preserving the flexibility it needs to accomplish its primary mandates without becoming mired in data quality disputes.

The principle that EPA has begun to address here, and should develop in greater detail, is that of priority. In particular, EPA should clearly state that when deciding whether to disseminate or use data, "quality" is only one factor to consider as envisioned by the PRA. First, the agency must answer to its core substantive mission, as directed by Congress. Second, the agency must operate within budgetary constraints; the guidelines will place off-budget burdens on EPA, which could potentially cause a massive transfer of already scarce resources to addressing data quality complaints and procedural requirements. This should be avoided. And third, the agency should consider the benefits of timely dissemination in carrying out its core mission and the general goal of democratic openness.

5. Draft Guidelines Section 1.3 What is not covered by these guidelines?

Almost every agency notes within their draft guidelines specific types of "information" and methods of "dissemination" not covered by the guidelines. However, while several agencies simply listed out the exemptions noted in the original OMB guidelines, EPA explains and details each of the disseminations not covered. EPA also expands the list of exemptions beyond the original OMB list. OMB Watch supports EPA's effort to clarify those types of information and methods of dissemination that need to be exempt from the guidelines. These exemptions are sensible restrictions that allow the agency to smoothly accomplish numerous necessary functions, such as responding to Freedom of Information Act requests, responding to a citizen's letter or email, making a presentation, or compiling reports from regulated industry into useful databases.

Among the exemptions listed in the guidelines the EPA notes:

"guidelines do not apply where EPA distributes this information simply to provide the public with quicker and easier access to materials submitted to EPA that are publicly available."

Examples of information EPA does not cover under these guidelines include:

- "a. Submissions of information under mandates or requirements, such as filings required by statutes, regulations, orders, permits, or licenses. This includes submissions of information by applicants for a permit, license, approval, authorization, grant, or other benefit or permission.
- b. Information submitted voluntarily to EPA. Examples include information in submissions relating to an EPA program, process or activity, such as public comments submitted in a rulemaking; information submitted by a participant in a voluntary program; and other information voluntarily provided to EPA by third parties, such as data, studies, analyses, and other types of comments or input."

It is important that among the exemptions EPA ensures that information submitted by third parties is excluded from the guidelines. Currently, EPA specifically notes this exclusion in the "b" example above. Many in the regulated industry want agency guidelines to apply to all information submitted to the agency by third parties. This approach could raise many complications. To simplify the process and minimize any undue burden on the agency, EPA should maintain its position that the data quality guidelines only apply to information disseminated that has been either authored or approved by the agency and not when the agency is merely acting as a conduit of information.

OMB Watch also commends EPA for having the foresight to include statements that the agency may later identify instances that should not be covered by the data quality guidelines.

In Section 1.3 EPA states:

"EPA may identify other materials that are not "information" for purposes of these guidelines."

and

"EPA may identify other instances where information is not "disseminated" by EPA because EPA does not initiate or sponsor the distribution of information."

Even with great effort, no agency can be certain to have accurately anticipated all possibilities; therefore a catch-all clause that allows the agency to amend the list later is only prudent.

6. Draft Guidelines Section 3.2 How does the EPA define influential information for these guidelines?

In this section EPA has defined influential information by example rather than simply following the rather vague definition of "influential" that OMB offered in its guidelines. EPA lists what information and types of information fit within the definition of "influential information," and only lists three specific examples and another catch-all case-by-case clause of information that the agency may determine to be influential. EPA's three classes of "influential information" are: 1) information in support of agency actions (rules, substantive notices, studies, etc.); 2) information in support of OMB economically significant actions; and 3) work products undergoing peer review.

Even within these three examples of "influential information" EPA appropriately narrows the application of the data quality guidelines to make them manageable. For "influential information" EPA states:

"to the extent that they contain scientific, financial, or statistical information, that information should adhere to a higher standard of quality"

This statement clearly indicates that EPA intends to only apply the higher standard of quality reserved for “influential information” to the “scientific, financial, or statistical information.” OMB Watch concurs with EPA's position.

There may be temptation to label information as “influential” at the time the information is collected or at least very early in the lifecycle of the information. This should be avoided, as it would be time-consuming, burdensome, and likely interfere with dissemination efforts. EPA should continue its efforts to define “influential” information, employing a high threshold for coverage, but not pigeonholing information into arbitrary categories such as “influential.” Indeed, OMB Watch advocates that the agency use an even more narrow definition or set of examples for influential information than in the current guidelines. By limiting the coverage of these guidelines, EPA can maximize its flexibility and preserve its ability to act in a timely fashion.

7. Draft Guidelines Section 3.3 How does EPA ensure and maximize the quality of “influential” information?

EPA does not appear to propose establishing any new procedures or policies for ensuring and maximizing the quality of influential information. OMB Watch supports this decision and believes that the numerous data quality and correction programs already in place adequately address this issue, even for “influential” information. Only by relying on these tested and proven programs operated by experienced personnel can EPA maintain and improve its data quality performance.

8. Draft Guidelines Section 3.4 How does EPA ensure and maximize the quality of “influential” scientific risk assessment information?

The implications of the data quality guidelines for agency risk assessments, which generally serve as the foundation and justification for health, safety, and environmental regulation are of particular concern to us. In laying out agency-wide parameters for the guidelines, as directed by Congress, OMB went far beyond the congressional mandate and asked agencies to “adapt or adopt” principles for risk assessment laid out in the Safe Drinking Water Act (SDWA) Amendments of 1996.

OMB Watch supports EPA's decision to **adapt** the SDWA principles (this decision is also discussed in Section 4.3 of the Background and Discussion preceding the draft guidelines). The SDWA principles may not be appropriate for all types of risk assessment—in particular those dealing with safety or ecological concerns—and may conflict with other underlying statutes. EPA should not undertake new policies for risk analysis, imposing additional burdens, in response to OMB's guidelines. Such significant and far-reaching action must come only at the direction of Congress, which has previously considered and rejected across-the-board requirements for risk assessment.

In this section EPA again acknowledges that a balance must be struck between the need for decision-making and action by the agency in its efforts to protect human health and

the environment and the desire for the highest quality data possible. Specifically EPA notes:

“The level of effort and complexity of detail of a risk assessment should balance the information needs for decision making and the effort needed to develop such information.”

OMB Watch believes that this is another important delineation of the boundaries the data quality guidelines must reasonably face, especially with respect to EPA's primary responsibilities—protecting human health and the environment. OMB Watch believes it should be made clear that under no circumstances should the data quality guidelines be seen to preempt EPA obligations to protect human health and the environment. OMB Watch encourages and supports all efforts by EPA to clearly detail such limits in its data quality guidelines.

The SDWA requires, among other things, “the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices.” In EPA's draft guidelines the agency states that:

“In applying these principles, “best available” refers to the availability at the time an assessment was made”

We commend the EPA for proposing one of the most important adaptations to the SDWA principles we have seen in agency draft guidelines, interpreting “best available” as the best available at the time the study was done. Other agencies also make conditional adaptations, noting “when possible” and “where available,” these SDWA principles or some version of them will be applied.

OMB Watch recommends EPA make a number of points on peer review, which Congress has never passed as an across-the board requirement. First, EPA should state that the sort of peer review envisioned by the Safe Drinking Water Act is inappropriate for all types of risk analysis, and may conflict with underlying statutes. Independent external peer review of research can be extremely useful to agencies; at the same time, the agency should clearly reserve the option to bypass peer review, except where mandated by statute. In fact, OMB's guidelines place agencies in a difficult position by stating that independent external review is satisfactory in determining “quality,” but may not be satisfactory when challenged. This is further evidence that OMB fully intended for the agency to have flexibility in employing peer review.

Second, EPA should state that “influential” information does not need to be subjected to new formal, external, independent peer review to meet the “objectivity” standard. And third, where peer review is employed, the agency should commit to using appropriately balanced peer review panels and avoid conflicts of interest. The OMB peer review recommendations on this point are inadequate. They do not require *public* disclosure of information relating to peer reviewers and do not prioritize the importance of avoiding conflicts of interest. When agencies utilize peer review, they should avoid conflicts of

interests and where there are any potential conflicts, they should be disclosed not just to the agency, but also the public. These comments also have implications for EPA's Science Advisory Board policies.

9. Draft Guidelines Section 5.1 What are EPA's Administrative Mechanisms for Affected Persons to Seek and Obtain Appropriate Correction of Information?

OMB's implementing guidelines require agencies to establish "administrative mechanisms allowing affected persons to seek and obtain, where appropriate, timely correction of information maintained and disseminated by the agency that does not comply with OMB or agency guidelines." The design of this mechanism and the procedures by which it will operate are critical. As every agency faces limited resources, this mechanism should be constructed cautiously with adequate procedural safeguards to protect the agency from becoming mired down in minor data disputes, bad faith requests, and frivolous, repetitive, or non-timely claims. Additionally, agencies should limit the mechanism to only what is required in the Data Quality Act so as to avoid any possibility of creating new rights under administrative law or public confusion.

When describing EPA's approach to the administrative mechanism in this section EPA states:

"OEI manages the administrative mechanisms which enable affected persons to seek and obtain, where appropriate, correction of information maintained or disseminated by the Agency that does not comply with EPA or OMB Information Quality Guidelines."

EPA seems to be indicating that requests for correction will be handled by administrative mechanisms already operating with its Office of Environmental Information (OEI). OMB Watch supports EPA using current agency procedures and mechanisms as appropriate and sufficient means in meeting the requirements of the Data Quality Act. It is important that EPA does not establish an extensive new administrative mechanism for handling data quality disputes or requests for corrections.

Keeping the public properly informed of the use of this administrative mechanism will be an important aspect to evaluating its progress and usefulness, as well as demonstrating the transparency that the data quality guidelines advocate. OMB Watch recommends that EPA establish a docket system as a component of its administrative mechanism for data quality. The docket should include information on who requests a change, the nature of the request, any specific changes made, and why they were made. Additionally, EPA should post flags within publicly accessible databases noting any changes that have occurred.

10. Draft Guidelines Section 5.2 Who may request a correction of information from the Agency?

OMB Watch advises EPA to strengthen its position in this section. EPA briefly states that

“Any individual or person may request a correction of information from EPA, if that individual or person is an "affected person". For the purposes of these guidelines, "affected persons" are persons who may benefit or be harmed by the disseminated information.”

The definition for “affected persons” is far too vague. EPA should expand its efforts to define and describe who is and who is not an affected person in much the same way the agency approached exemptions of information from the guidelines.

11. Draft Guidelines Section 5.3 What Should be Included in a Request for Correction of Information?

EPA details four pieces of information that any request for correction of information should include: 1) indication that a correction of information is being sought; 2) name and contact information; 3) description of information that supposedly does not comply with EPA or OMB guidelines; and 4) an explanation of how the information does not comply.

OMB Watch encourages EPA to add additional requirements that clearly state that the burden of proof lies squarely with the requester to demonstrate both that they are an affected person and that the challenged information does not comply with data quality guidelines. It is not EPA's responsibility to defend the validity of information dissemination. EPA should examine language in the Department of Transportation's draft guidelines dealing with its requirements for requests.

12. Draft Guidelines Section 5.4 Will EPA consider all requests for correction of information?

In this section EPA provides several reasons the agency may use to dismiss a request for a correction of information. First, a request may be deemed “frivolous,” including requests that are trivial, without justification, made in bad faith, or unduly burdensome on the agency.

Second, EPA may not consider a request if a mechanism, other than the data quality guidelines, is already in place to handle comments and complaints. OMB Watch commends EPA's decision to limit complaints under its administrative mechanisms to information that is not already subject to existing data quality programs and measures. This avoids duplication of agency efforts, consistent with OMB's implementing guidelines. For example, several agencies, including EPA, note in their draft guidelines that adequate procedures and opportunities exist in the rulemaking process to question or correct information, and therefore data disseminated from a rulemaking process cannot be disputed under the data quality administrative mechanism.

Third and finally, EPA may not consider an information correction request if the party submitting the request is not an “affected person.” However, without a stronger definition of “affected person,” this clause will rarely be useful in excluding requests.

OMB Watch urges EPA to strengthen this section to prevent the data quality guidelines from becoming overly burdensome and wasteful of agency resources. Given that EPA must consider and safeguard itself and its mission from the coming efforts to use the data quality guidelines to delay, manipulate, and unfairly affect the outcome of the agency's activities, it would only be prudent to provide more detailed requirements. Specifically:

- The administrative mechanism should apply only to corrections of factual data and information. The guidelines should explicitly state that the administrative mechanism will not consider interpretations of data and information, or requests for de-publishing.
- EPA should establish a 30-day limit for requests after which an agency has the option to reject a request (i.e., a data quality complaint must be made within thirty days of the information's release).
- EPA should limit complaints for any data quality standard that presents a potential moving target (i.e., "best available evidence") to information available at the time of dissemination.

13. Draft Guidelines Section 5.5 How will EPA respond to a request for a correction of information?

EPA notes that if a request is deemed appropriate for consideration, the requester will receive an explanation of its decision whether the request is granted or not. OMB Watch believes that there are several additional components EPA should include in this section.

EPA should specifically state that its response to correction requests will be proportional to the significance and importance of the information in question. This will establish the necessary flexibility for EPA to set aside a request that has been superseded or is otherwise outdated.

OMB Watch also recommends EPA clearly assert that even if information subject to the data quality guidelines does not comply with those guidelines, the agency is not required to change, or in any way alter, the content or status of the information simply based on the receipt of a request for correction. The Department of Transportation has a good example of such an assertion in its draft guidelines.

14. Draft Guidelines Section 5.6 Will EPA reconsider its decision on a request for correction of information?

In this section EPA notes that requesters dissatisfied with EPA's decision regarding their correction request can request reconsideration. EPA requires that requests for reconsideration contain: 1) an indication that reconsideration on a previously submitted

request is being sought; 2) name and contact information; 3) an explanation of why the requestor disagrees with EPA's decision with, if possible, a recommendation for corrective action; and 4) a copy of the original request.

EPA should be aware that the Data Quality Act does not address reconsideration of complaints and that such a requirement is far outside the scope of the statutory requirements. In that context, OMB Watch advises EPA to keep its reconsideration process fairly informal and limited in scope, consistent with the fact that neither the initial consideration nor the agency's reconsideration is a legally enforceable process.

It should also be noted that the review mechanism is to ensure that initial agency review was conducted with due diligence. Accordingly, OMB Watch recommends EPA limit its reconsideration process to showing due diligence in the initial consideration of a request. OMB Watch also encourages EPA to establish a timeliness requirement for requesting reconsideration. Several agencies have proposed a 30-day time limit, which we support.

15. Draft Guidelines Section 5.7 How does EPA process requests for reconsideration of EPA decisions?

The reconsideration process EPA describes in this section is fairly vague. EPA states that reconsideration requests would be logged by OEI and then sent to the appropriate EPA program office or region with responsibility for the information in question. The assistant administrator or regional administrator will work with OEI to form an executive panel, chaired by the EPA chief information officer, to review the reconsideration request. The assistant administrator or regional administrator informed by the panel's recommendation would make the final decision on the appeal.

OMB Watch has two recommendations for EPA's reconsideration process. First, EPA should centralize the final decision on reconsideration requests at the Office of Environmental Information (OEI). It makes sense that after program or regional offices handle the initial request that an objective office make the final decision on any reconsideration that is needed. Another concern is the amount of resources and time the reconsideration process might require from assistant and regional administrators, under EPA's current proposal, and especially for the chief information officer. This process could easily become unduly burdensome and interfere with the effective management of a program or office. EPA should amend this reconsideration process to allow the responsible administrators to delegate the appeal authority to an appropriate and unbiased EPA official if resource and time constraints on the administrator make it necessary.

Conclusion

Although we object to the broad interpretation OMB gave to the Data Quality Act, OMB Watch is fairly encouraged by EPA's draft data quality guidelines. There are several positive positions that OMB Watch commends the agency for taking and encourages

EPA to maintain these points in the final data quality guidelines. These commendable points include:

- Strong commitment to public access;
- Reliance on existing programs and procedures to satisfy data quality guideline requirements;
- Clear indication that data quality guidelines are not legally binding on EPA;
- Expansion and clarification of exemptions;
- Narrow definition of influential information; and
- Adapting the SDWA principles for risk assessments.

Alternatively, OMB Watch believes that there are several parts of EPA's draft data quality guidelines that need to be improved before finalized. The main improvements that OMB Watch recommends:

- Additional requirements on requestors, including burden of proof to establish they are affected and that information is incorrect;
- Clearly state that third party information is exempt from the data quality guidelines;
- Establish flexibility in use of peer review, which, when conducted, should be a balanced and open process;
- Establish a timeliness requirement for information correction requests, as well as requests for reconsideration;
- Limit administrative mechanism to correcting factual errors in information and do not consider complaints about "moving target" standards such as "best available";
- Establish that responses to correction requests will be proportional to the significance and importance of the information in question; and
- Limit reconsideration process to showing due diligence in the initial consideration.

Thank you for consideration of our views.

Sincerely,

Sean Moulton
Senior Policy Analyst